IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

R. C. Rev..No. 23 of 2007()

RCA.40/2003 of I ADDL. DISTRICT COURT, TRIVANDRUM
RCP.57/2002 of RENT CONTROL COURT, TRIVANDRUM
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REVISION PETITIONER/APPELLANTS/RESPONDENTS

RAJENDRAN, SURABHI DRY CLEANERS,
T.C.81/2527, MANNATTUMUKKU, KULATHOOR P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

RESPONDENTS: PETITIONER/ADDL.RESPONDENTS 2 TO 6
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1. B.KUNJULEKSHMI, LEKSHMI NIVAS,
KULATHOOR P.O., THIRUVANANTHAPURAM.

2. DR.GEETHA ANIYAN, LEKSHMI NIVAS,
KULATHOOR P.O., THIRUVANANTHAPURAM.

3. THARAKESWARY, LEKSHMI NIVAS,
KULATHOOR P.O, THIRUVANANTHAPURAM.

4. AJAYAKUMARI, LEKSHMI NIVAS,
KULATHOOR PO., THIRUVANANTHAPURAM.

5. DR. CHANDRA PRABHA, LEKSHMI NIVAS,
KULATHOOR P.O., THIRUVANANTHAPURAM.

BY /

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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R.C.R. NO. 23 OF 2007

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Dated this the 24th day of January 2007

ORDER

Udayabhanu, J

The Revision Petitioner/tenant has impeached the concurrent findings of the courts below allowing the application of the landlord under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 that the premises in which he is running a dry cleaning outfit is required for the daughter of the landlord/petitioner for conducting a homeo clinic, she being a qualified homeopath. It is the case that she is jobless at the time and wanted to start a clinic exclusively for women and children. Both the courts below found that there is evidence to prove the bonafide need set up and it was also found that the revision petitioner is not entitled to the protection of the second proviso to section 11(3) of the Act as it was brought out from Ext.C1, report of the commissioner, that there are a number of other shop rooms available in the locality. The contention raised

relying on 1st proviso to Section 11(3) of the Act was also found against, as there was no other premises in the possession of the landlord apart from the shop room wherein somebody else is running a medical shop. The contention stressed herein is that during the pendency of the proceedings the landlord/petitioner, who was running a homeopathic clinic in the adjacent room to the petition schedule premises, died and hence the bonafide need set up has been eclipsed by the subsequent event and that PW2, the daughter can conduct the homeo clinic in the place wherein the father was running the homeo clinic. The above contention was considered by the appellate authority and rejected. The appellate authority has pointed out that at the time of evidence itself i.e., from the testimony of PWs 1 and 2 the son of the landlord and the daughter respectively, for whom the premises is sought have testified that the landlord/petitioner has executed a Will and that they have also produced the Will with application to receive the same. PW1, the son was examined before the Rent Control Court as the landlord/petitioner was not well. It is to be

noted that earlier to the death of the father PWs 1 and 2 have deposed as to the contents of the Will and that in the Will the portion wherein the father was conducting the homeo clinic is bequeathed to PW1, the son and the portion sought to be evicted is alloted to PW2, the daughter. It was relying on the above evidence that the appellate authority has found that the need set up is not eclipsed by the unanticipated subsequent event of the death of the landlord/petitioner. It appears that, in the light of the above reasoning, well founded, there is nothing to interfere with the order of the appellate authority. The contention of the counsel for the revision petitioner is that the Will has not been properly proved. We find that at the time when the evidence was adduced the contingency of the death of the father was not anticipated and yet the contents of the Will was proved before the court. Hence, truthfulness of the same need not be doubted. Moreover, it is not for the tenant to insist for the proper proof of the Will. The appellate authority has also noted rightly that execution of the Will was not disputed as such and that there is

no contention that the Will was written up for the purpose of evicting the tenant. In the circumstances, we find that none of the contentions raised by the revision petitioner stand to reason and Revision Petition is liable to be dismissed at the threshold.

2. Considering the plea of the counsel for the revision petitioner that he wanted time to shift the business which according to him is the sole means of his livelihood, we are inclined to grant 4 months time from today onwards to vacate the premises on condition that he shall remit the entire rental arrears due, if any, and continue to deposit the rent due in future and file an affidavit within 20 days from today undertaking that he shall vacate the premises on or before **24.05.2007.**

The revision petition is dismissed in limine with the above direction.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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